

ORIGINAL

Jabbar Sachet Al-Khafagi #10877333
3405 Deer Park Drive SE
Salem, OR 97310
Plaintiff, *pro se*

FILED '7 FEB '20 10:49 USDC-ORF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JABBAR SACHET AL-KHAFAGI,)	
)	Case No. 2:19-CV-00669-MO
Plaintiff,)	
)	
vs.)	PLAINTIFF'S OPPOSITION TO
)	DEFENDANT'S MOTION TO DISMISS
CHARLES C. SUNG, ET AL,)	
)	
Defendants.)	
_____)	

I. Introduction

Plaintiff is a state prisoner who filed suit under 42 USC. § 1983 alleging that Defendants, state prison officials acts and omissions of the have subjected and continue to subject him to cruel and unusual punishment and denial of due process, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, Plaintiff seeks monetary damages to be determined, declaratory judgment and injunctive relief. Plaintiff requests a trial by jury and seeks an award of reasonable costs and attorneys' fees pursuant to 42 USC § 1988.

Defendants move for dismissal of Plaintiff's claims against Dr. Charles Sung under Fed R Civ P 12(c) on the ground that any claim against Dr. Sung is "time-barred under the applicable two-year statute of limitations, *or alternatively*, under Rule 12(b)(2), because this Court does not have personal jurisdiction over Dr. Sung." Defendant's motion should be denied. When properly

analyzed, Plaintiff's claim is timely because this action was filed within two years from the date when the last element of his claim ripened and the cause of action accrued.

II. BACKGROUND

A. Factual background.

In his Complaint, Plaintiff alleges that the Oregon Department of Corrections, (ODOC) referred Plaintiff to Defendant SUNG, a contract medical doctor for a procedure on his left eye at Defendant Sung's medical clinic in Kennewick, WA. (Complaint, p 4). Plaintiff alleged that on May 2, 2016 Defendant SUNG performed cataract surgery and was seen by him in follow-up care until April 2, 2017. (*Id.*) Plaintiff went on to allege that Defendant SUNG performed additional surgery on his left eye on April 2, 2017. Dr. Sung performed a vitrectomy surgery on his left eye. (*Id.* at 5). During that surgery, Plaintiff alleged that during the April 2, 2017 surgery Defendant Sung did not administer any type of anesthesia and placed his elbow on Plaintiff's forehead and kept it there despite being informed that he was causing Plaintiff extreme pain. (*Id.*) Plaintiff further alleged that he was aware for the first time doctor that his eyesight in his left eye was permanently lost on June 30, 2018 when he was informed by a medical doctor of that reality. (Complaint, pp 7-8). Plaintiff alleged that as a direct and proximate result of the surgery, the vision in his left eye has been damaged. (*Id.*); *see also* (*id* at 9).

B. Procedural background.

On April 29, 2019, Plaintiff filed his civil rights action pursuant to 42 USC. § 1983 alleging state prison officials acts and omissions of the have subjected and continue to subject him to cruel and unusual punishment and denial of due process, in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

On October 28, 2019, Defendant SUNG filed a Motion to Dismiss alleging that any claim

against Dr. Sung is “time-barred under the applicable two-year statute of limitations, *or alternatively*, under Rule 12(b)(2), because this Court does not have personal jurisdiction over Dr. Sung.”

III. THE DEFENDANTS’ MOTION TO DISMISS SHOULD BE DENIED

A. Standard of review in Fed. R. Civ. P. 12(b)(6) motion to dismiss.

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the sufficiency of the complaint. *North Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). Dismissal of the complaint, or any claim within it, “can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

The Supreme Court has outlined a two-step process for lower courts to follow in assessing the allegations in a complaint under Rule 12. First, the court must determine which allegations in the complaint are conclusory and, therefore, are not entitled to the assumption of truthfulness normally accorded to allegations in a complaint. *Ashcroft v. Iqbal*, 556 US 662, 678 (2008). Second, the court must proceed to consider the remaining factual allegations, assuming them to be true, and determine whether they suggest a “plausible” claim for relief. *Id.* at 679. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 556 US at 678 (citing *Bell Atlantic Corp. v. Twombly*, 550 US 544, 556 (2007)). “In sum, for a complaint to survive a motion to dismiss the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the pleader to relief.” *Moss v. US Secret Service*, 572 F3d 962, 969 (9th Cir. 2009).

If a claim is based on a proper legal theory but fails to allege sufficient facts, the Plaintiff should be afforded the opportunity to amend the complaint before dismissal. *Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983). If the claim is not based on a proper legal theory, the claim should be dismissed. *Id.* “Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment.” *Moss*, 572 F.3d at 972.

“A document filed *pro se* is ‘to be liberally construed,’ and a ‘*pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.’” *Erickson v. Pardus*, 551 US 89 (2007)(per curiam)(quoting *Estelle v. Gamble*, 429 US 97 (1976)). The rule of liberal construction of *pro se* pleadings is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992).

B. Stating a claim under 42 USC. § 1983.

42 USC. § 1983 (1996) creates liability for:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]

In order to state a viable § 1983 claim a Plaintiff must plead that (1) the action occurred “under color of law” and (2) the action is a deprivation of a constitutional right or a federal statutory right. *Parratt v. Taylor*, 451 US 527, 535 (1981). A defendant’s conduct must have a close causal connection to a plaintiff’s injury in order for § 1983 liability to attach. *Martinez v. California*, 444 US 277, 285 (1980).

C. Any claim against Defendant SUNG is not time-barred.

This Court can only rule in Defendant’s favor on this issue if it “appears beyond doubt that the Plaintiff can prove no set of facts that would establish the timeliness of the claim.”

Supermail Cargo, Inc. v. United States, 68 F3d 1204, 1207 (9th Cir 1995). Generally, a complaint must be timely filed. The Civil Rights Act, 42 USC, §1983, contains no statute of limitations. “Thus, the federal courts [] apply the applicable period of limitations under state law for the jurisdiction in which the claim arose.” *Rose v. Rinaldi*, 654 F2d 546, 547 (9th Cir 1981). In this case, the relevant statute is Oregon’s 2-year tort statute of limitations in ORS 12.110. *See Gaston v. Parsons*, 318 Or 247, 255-56 (1994)(interpreting the ORS 12.110(4) 2-year tort statute of limitations, which is triggered by discovery of injury, to require more than “a mere suspicion” of an actionable injury).

Defendant SUNG argues that Plaintiff did not allege any “encounter with Dr Sung after April 2017[,]” (Defendant Charles C. Sung, MD’s Motion to Dismiss Plaintiff’s Complaint (Dismiss Motion), p 3), and that Plaintiff “was aware of having an injury to his left eye from the surgery by April 3, 2017 at the latest.” (*Id.*). Defendant points to Plaintiff’s non-medical opinion statement that Plaintiff made to Defendant SUNG the day after the April 3, 2017 surgery that Plaintiff thought he was blind in his left eye, with Defendant SUNG’s apparent deflection of blame on Plaintiff for “mov[ing] during the surgery.” (*Id.*).

Plaintiff’s mere suspicion that Defendant SUNG may have acted with deliberate indifference was not enough to trigger the statute of limitations in this case. (Declaration Of JABBAR SACHET AL-KHAFAGI In Support Of Plaintiff’s Response And Opposition To Defendant’s Motion To Dismiss (Pl Decl), ¶¶ 8-9). Plaintiff’s allegation was little more than what he *thought* may have occurred at that time as a lay person not trained in any medical sciences whatsoever. (*Id.*). Plaintiff did not learn that he was permanently blind until June 30, 2018, when he was seen by Silvio Gurdian, MD, of ECPS at 1309 Liberty Street, Salem, Oregon 97302-4245; Tel: (503) 585-2022, where the doctor informed Plaintiff, after a medical

examination that he was officially blind in his left eye. (Pl Decl, ¶10). Until the harm done by Defendant SUNG was realized by Plaintiff by confirmation from another doctor, Silvio Gurdian, MD, on June 30, 2018, Plaintiff was merely surmising. (Pl Decl, ¶ 8-9).

The fact remains that nothing in Plaintiff's medical records indicate that he was permanently blind in his left eye until June 30, 2018. In fact the "Provider's Returning Information" dated April 11, 2017 indicates that Plaintiff was "doing well," which does not indicate or connote blindness. (Exhibit 1, p 1). On April 26, 2017 the same notes "hemorrhage has decreased, but macular scar is present, which does not indicate or connote blindness to Plaintiff a non-medical lay person. (Exhibit 1, p 2). Further, there is nothing in Plaintiff's medical record that notes that Defendant SUNG informed Plaintiff that he would be permanently blind, or that that blindness was a result of his actions on April 2, 2017. Plaintiff cannot be held to that date based solely on Defendant SUNG's assertions to him.

Although Plaintiff's claims are rooted to events that took place on April 2, 2017, it is inequitable to bar Plaintiff who had no idea he has been harmed until June 30, 2018 from seeking redress. (Pl Decl, ¶ 10). The statute of limitations has generally been tolled by the "discovery rule." Under this rule, the statute only begins to run once a plaintiff has knowledge of the "critical facts" of his injury, which are "that he has been hurt and who has inflicted the injury." *United States v. Kubrick*, 444 US 111, 122 (1979). In addition to being a rule of Oregon law, *see*, e.g., *Gaston v. Parsons*, 318 Or 247, 255-56 (1994), the discovery rule has been observed as a matter of federal law, *Kubrick*, 444 U.S. at 120.

There is a caveat to this rule though, in that Plaintiff must have been diligent in discovering the critical facts. As a result, a plaintiff who did not actually know that his rights were violated will be barred from bringing his claim after the running of the statute of

limitations, if he should have known in the exercise of due diligence. *See Herrera-Diaz v. United States*, 845 F2d 1534, 1537 (9th Cir 1988). But “what [a plaintiff] knew and when [he] knew it are questions of fact.” *Simmons v. United States*, 805 F2d 1363, 1368 (9th Cir 1986). Here Plaintiff was extremely diligent submitting several requests to ODOC medical services for help discovering the reason he was having difficulties in his left eye, an adequate diagnosis, and treatment so that he could gain his eye sight in his left eye. (Exhibit 1, pp 3-21) (Pl Decl, ¶ 11). A trier of fact could find that a reasonable person, untrained in medicine, particularly the science of ophthalmology, would not necessarily have connected Plaintiff’s symptoms to the Defendant SUNG’s actions on April 2, 2017. This is so under the light of the obfuscation Plaintiff received about the prognosis of recovery in his left eye. It was not until his time with Dr. Silvio Gurdian on June 30, 2018 did Plaintiff learn that his eye sight loss in his left eye was permanent.

Plaintiff saw Defendant SUNG several additional times after April 2, 2017 where Plaintiff received inadequate medical attention also, Plaintiff thus raises a triable issue as to whether his section 1983 claims against Defendant SUNG were timely as will be further explained below.

D. Continuing Harm

Generally, a complaint must be timely filed. The Civil Rights Act, 42 USC, §1983, contains no statute of limitations. “Thus, the federal courts [] apply the applicable period of limitations under state law for the jurisdiction in which the claim arose.” *Rose v. Rinaldi*, 654 F2d 546, 547 (9th Cir 1981). In this case, the relevant statute is Oregon’s 2-year tort statute of limitations in ORS 12.110. *See Gaston v. Parsons*, 318 Or 247, 255-56 (1994)(interpreting the ORS 12.110(4) 2-year tort statute of limitations, which is triggered by discovery of injury, to require more than “a mere suspicion” of an actionable injury).

The continuing violation doctrine is an equitable doctrine designed “to prevent a defendant from using its earlier illegal conduct to avoid liability for later illegal conduct of the same sort.” *O’Loghlin v. County of Orange*, 229 F.3d 871, 875 (9th Cir 2000). To establish a continuing violation, a plaintiff must show “a series of related acts against a single individual . . . that . . . ‘are related closely enough to constitute a continuing violation.’” *Green v. Los Angeles County Superintendent of Schools*, 883 F.2d 1472, 1480-81 (9th Cir 1989)(quoting *Bruno v. Western Elec Co*, 829 F.2d 957, 961 (10th Cir 1987)).

Here, Defendant’s failure to inform Plaintiff of the nature and degree of the injury to his left eye for over a year, leading him to believe that they were taking steps to rectify Defendant SUNG’s deliberate indifference resulted in a continuing harm to Plaintiff. (Pl Decl, p ____). *See Heard v. Sheahan*, 253 F.3d 316, 318 (7th Cir 2001)(finding that continuous violation doctrine applied to defendants’ deliberate indifference for the span of time that prison officials were aware of plaintiff’s injury and allegedly refused to treat it); *Lavellee v. Listi*, 611 F.2d 1129, 1132 (5th Cir 1980)(“[T]he [arrestee’s] allegation of a failure to provide needed and requested medical attention constitutes a continuing tort, which does not accrue until the date medical attention is provided.”); *Neel v. Rehberg*, 577 F.2d 262, 263-64 (5th Cir 1978)(per curiam)(finding that where inmate alleged that jail officials failed to provide medical treatment over a three-month period, the continuous violation doctrine applied and the statute of limitations did not begin to run until the end of that period); *see also Evans v. County of San Diego*, No. 06 CV 0877 JM (RBB), 2008 US Dist LEXIS 25054, 2008 WL 842459, at *12 (SD Cal Mar 27, 2008)(applying continuing violation doctrine to prisoner’s Eighth Amendment medical treatment claim). *Martin v. Woodford*, No. 1:08-cv-0415 LJO SKO PC, 2010 US Dist LEXIS 69693, 2010 WL 2773235 at *4-*5 (ED Cal July 13, 2010), adopted by 2010 U.S. Dist. LEXIS 103820, 2010 WL 3853305

(ED Cal Sept 29, 2010), *aff'd*, 503 Fed Appx 530, 2013 WL 29792 (9th Cir 2013); *Barron v. Martel*, 2014 US Dist LEXIS 93421 (2014).

E. Jurisdiction over Defendant SUNG is conferred as a contract provider for ODOC.

To state a claim under section 1983, Plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a “person acting under color of state law.” *West v. Atkins*, 487 US 42, 48 (1988). “[S]ection 1983 only provides a remedy against persons acting under color of state law.” *Ibrahim v. Dep’t of Homeland Sec.*, 538 F3d 1250, 1257 (9th Cir 2008). “[S]tate employment is generally sufficient to render the defendant a state actor” *Lugar v. Edmondson Oil Co, Inc*, 457 US 922, 935 n18 (1982). On the other hand, private actors are presumed to be outside the scope of § 1983 as not acting under color of state law. *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F3d 916, 922 (9th Cir 2011). The ultimate issue in determining whether a person is subject to suit under §1983 is the same question posed in cases arising under the Eighth Amendment: is the alleged infringement of federal rights fairly attributable to the government?

“The Eighth Amendment imposes upon prison officials the duty to provide humane conditions of confinement; prison officials must ensure that prisoners receive adequate . . . medical care.” *Peralta v. Dillard*, 744 F3d 1076, 1091 (9th Cir 2014)(citing *Farmer v. Brennan*, 511 US 825, 832 (1994). “The State’s obligation remains even if it has contracted with private parties to provide medical care.” *Braggs v. Dunn*, FSupp3d, No. CV-214-CV-601-MHTWO, 257 FSupp 3d 1171, 2017 US Dist LEXIS 98755, 2017 WL 2773833, at *8 (MD Ala June 27, 2017)(citing *West v. Atkins*, 487 US 42, 56 (1988)). “That is, the State is liable for the contractor’s unconstitutional policies and practices if the contractor is allowed to determine policy either ‘expressly or by default.’” *Ancata v. Prison Health Servs, Inc*, 769 F2d 700, 706

n11 (11th Cir 1985)(cited in *Braggs*, 2017 US Dist LEXIS 98755, 2017 WL 2773833, at *8). Moreover, it has long been established that “establish[ing] or utiliz[ing] a policy or custom requiring that inmates seek court orders to obtain medical services” is a basis for liability “if the result of that policy or custom played a role in any deliberate indifference to” an inmate’s medical needs. *Ancata*, 769 F2d at 706 (citing *Berdin v. Duggan*, 701 F2d 909 (11th Cir 1983)).

Here, Plaintiff has alleged that Defendant SUNG has failed to provide Plaintiff adequate medical care and that the ODOC contracted with Defendant SUNG to provide health care services for Plaintiff. Accordingly, Defendant SUNG was acting under color of state law by way of his contract with the ODOC to provide medical services to prisoners.

IV. CONCLUSION

For the reasons stated above, Defendants’ Motion to Dismiss should be denied.

DATED this 4th day of February, 2020.



Jabbar Sachet Al-Khafagi #10877333
3405 Deer Park Drive SE
Salem, OR 97310
Plaintiff, *pro se*

PROVIDER'S RETURNING INFORMATION

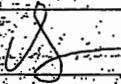
Diagnosis and Findings

Ox. Prednisolone, doing well

Provider's Recommendations / Orders (Do not mention any specific follow up dates or times to the inmate/patients for security reasons)

Add Acular 0.5% TID Q9

Community Provider's Signature



Date:

4-11-17

PLEASE REMEMBER TO SEND/ FAX A COPY OF YOUR WRITTEN REPORT TO THE REFERRING ODOC PHYSICIAN

MEDICATION NAME	WHICH EYE	HOW OFTEN TO USE	WHAT IT IS FOR
Prednisolone	Left	2x/day	
Acular	Left	3x/day	
B. Timolol	Left	2x/day	

From Dr Sung office
4-11-17Copy to pt
4-11-17
mm

Comments

Contacted Dr Sung on 4-11-17 Okay to substitute
Ac. Indolene for Acular

ODOC Provider

L1/11/17 JI

Date:

PROVIDER'S RETURNING INFORMATION

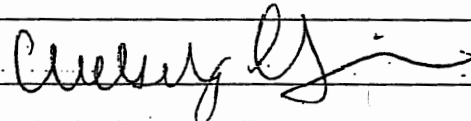
Diagnosis and Findings:

Hemorrhage has decreased, but macular scar is present in left eye.

Provider's Recommendations / Orders (Do not mention any specific follow up dates or times to the inmate/patients for security reasons):

Follow up with Dr. Evers in 1 week and return for US in 2-3 weeks for an office visit.

Community Provider's Signature:



Date:

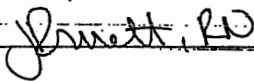
4/28/17

PLEASE REMEMBER TO SEND/ FAX A COPY OF YOUR WRITTEN REPORT TO THE REFERRING ODOC PHYSICIAN

POST CONSULT DOC COMMENT SECTION (Institution Use Only)

- ☐ Community Provider Orders Reviewed by Nursing with ODOC Provider for Urgent Needs:
☐ No Urgent Needs ☐ Urgent Needs, Orders Transcribed

ODOC Nursing Signature:



Date:

04/28/2017

Time:

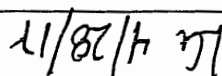
- ☐ Orders Approved

- ☐ Orders Denied

- ☐ To TLC

Comments:

ODOC Provider:



Date:

NON-EMERGENCY HEALTH CARE REQUEST

Name Al-Khafagi Sabbar State ID# 10877333 Housing 13-21 Date 11/24/19

Medications:

- ☐ I have not received my prescription
- ☐ My prescription is about to expire
- ☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
- ☐ Repair

Vaccines

- ☐ Hepatitis A/B
- ☐ Flu
- ☐ Pneumonia
- ☐ Shingles
- ☐ HIV Test
- ☐ Hepatitis C Test

Other Function

- ☐ BP check
- ☐ Test result request
- ☐ Is my appointment still scheduled?
- ☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

I see a white spot in my left eye and
I would like to have it checked out.

We have taken the following actions in response to your health service request:

- ☒ You will be scheduled to see: ☐ Provider ☒ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
- ☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments:

Nurse call out scheduled for
tomorrow

Responder's Signature: [Signature] Date: 11/24/19

NON-EMERGENCY HEALTH CARE REQUEST

Page 4 of 21

Exhibit 1

Name Al-Khatfagi, Tabbar State ID# 10877333 Housing 13-21 Date 9-8-19

Medications:

- ☐ I have not received my prescription
- ☐ My prescription is about to expire
- ☐ My prescription is not helping

Vaccines

- ☐ Hepatitis A/B
- ☐ Flu
- ☐ Pneumonia
- ☐ Shingles
- ☐ HIV Test
- ☐ Hepatitis C Test

Other Function

- ☐ BP check
- ☐ Test result request
- ☐ Is my appointment still scheduled?
- ☐ Other issues – not sick:

Glasses

- ☐ Eye exam for glasses
- ☐ Repair

Health Care request, issue, concern, or sickness:

my eye is watery/itchy/and painful. please help me?

We have taken the following actions in response to your health service request:

- ☒ You will be scheduled to see: ☐ Provider ☒ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
- ☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments:

Succade

Responder's Signature:

[Signature]

Date:

9/9/19

NON-EMERGENCY HEALTH CARE REQUEST

Page 5 of 21

Exhibit 1

AL Khafagi Jabbar 10877333 13-218 7-1-19

Name State ID# Housing Date

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

I need to be seen for eye pain, redness and Itching.

Thank you

Received
 JUL 01 2019

We have taken the following actions in response to your health service request:

- ☒ You will be scheduled to see: ☒ Provider ☐ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: _____

Responder's Signature: M. Lewis LewisC
 RN

Date: 7/1/19

NON-EMERGENCY HEALTH CARE REQUEST

AL-Khafagi, Jabbar

10877333

B-21B

6-23-19

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Exhibit 1

Name

State ID#

Housing

Date

Medications:

- ☒ I have not received my prescription
☒ My prescription is about to expire
☒ My prescription is not helping

Glasses

- ☒ Eye exam for glasses
☒ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

I need medical attention to my left eye, pain,
 itching, redness at bad time.

We have taken the following actions in response to your health service request:

☒ You will be scheduled to see: ☐ Provider ☒ Nursing staff

☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

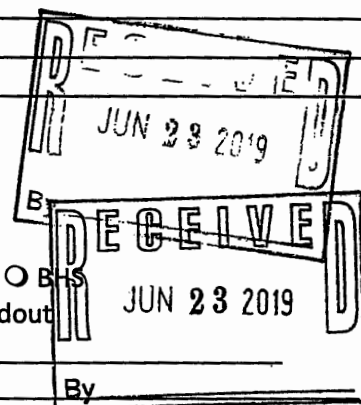
Additional Comments:

Scheduled Sickcall

Responder's Signature:

Date:

6/23/19



NON-EMERGENCY HEALTH CARE REQUEST

g, et al, 2:19-CV-0669-MO

AL-Khatagi, Jabbar 108 77333

13-7B

4

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Exhibit 1

Name State ID# Housing Date

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

I need to see a doctor to look at my left eye because I have very severe pain, very itchy and tears keep coming out of it.

We have taken the following actions in response to your health service request:

- ☒ You will be scheduled to see: ☒ Provider ☐ Nursing staff
☒ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments:

you have an upcoming appointment

Responder's Signature:

[Signature]

Date:

4/26/19

Received

APR 9 2019

NON-EMERGENCY HEALTH CARE REQUEST

AL-Khafagi-Jabbar S 10877333 13-7B 4-28 Page 9 of 21

Name State ID# Housing Date Exhibit 1

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

I need to see the eye Doctor, for emergency because
 I feel that the sickness defect in my left eye has
 moved to my good right eye, I know that
 I had an appointment with an outside eye specialist
 but Doctor Balogun informed me that the appointment
 was cancelled and she gave me an Eye Multi-Action
 Eye Allergy relief (Vismine) because she thinks I have
 Allergy in my eye and in fact I had 2 surgeries in the left
 eye and not Allergies.

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☒ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: you are scheduled.Responder's Signature: M. C. GreenM
OS2Date: 4/29/19Received
APR 28 2019

NON-EMERGENCY HEALTH CARE REQUEST

et al, 2:19-CV-0669-MO

AL Khatagi

Jabbar 10877333

13-7B

3-27

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Exhibit 1

Name State ID# Housing Date

Medications:

- ☐ I have not received my prescription
- ☐ My prescription is about to expire
- ☐ My prescription is not helping

Vaccines

- ☐ Hepatitis A/B
- ☐ Flu
- ☐ Pneumonia
- ☐ Shingles
- ☐ HIV Test
- ☐ Hepatitis C Test

Other Function

- ☐ BP check
- ☐ Test result request
- ☐ Is my appointment still scheduled?
- ☐ Other issues – not sick:

Glasses

- ☐ Eye exam for glasses
- ☐ Repair

Health Care request, issue, concern, or sickness:

I need eye drop (Pharma) Brand name
Prednisolone (pred forte) 1% 10 mL to help
with my eye pain

Thank you

Received

MAR 27 2019

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments:

YOU HAVE BEEN SCHEDULED

3/27/19

Responder's Signature: Date:

NON-EMERGENCY HEALTH CARE REQUEST

et al, 2:19-CV-0669-MO

Page 10 of 21

Exhibit 1

Al-Khafagi, Jabbar 10877333 13-ZB 1/1/19

Name State ID# Housing Date

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Glasses

- ☐ Eye exam for glasses
☐ Repair

Health Care request, issue, concern, or sickness:

I need my left eye repaired or replaced. I have been having a lot of pain and irritation in and around my left eye. Dr. Sung screwed up my left eye when he tried to ameliorate the scar he left on my left eye during my original cataract surgery. I believe Dr. Sung was negligent and/or deliberately indifferent when he did both surgeries on me. I need O.D.S.C. to get me an appointment with the Casey Eye Institute so they can figure out the proper way to make my left eye good again.

THANK YOU

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: _____

YOU HAVE BEEN SCHEDULED

Responder's Signature: _____ Date: _____

PETICIÓN DE ASISTENCIA MÉDICA NO-URGENTE

Page 11 of 21

Exhibit 1

All-Khafagi, J

10877333

13-7

12-10-18

Nombre

Numero Estatal

Vivienda

Fecha

Medicamentos:

- ☒ No he recibido mi receta
☒ Mi receta esta por vencer
☒ Mi receta no me está ayudando

Glasses

- ☒ Examen ocular de ojos
☒ Reparación

Vacunas

- ☐ Hepatitis A/B
☐ Gripe
☐ Pulmonía
☐ Culebrilla
☐ Prueba de VIH
☐ Prueba de Hepatitis C

Otra función

- ☐ Revisión de tensión arterial
☐ Petición para resultados de prueba
☐ ¿Todavía tengo una cita prevista?
☐ Otras preguntas que no son para asistencia médica:

Petición de asistencia médica, cuestión, preocupación, o enfermedad:

I want to talk to Dr Bristol about the great pain in my eye.

Received

DEC 10 2018

Hemos tomado las siguientes acciones en respuesta a su petición de servicio médico:

- ☐ Usted será programado para ver a: ☐ Abastecedor medico ☐ Enfermeras
☐ Su petición ha sido expedida a: ☐ La gerencia ☐ Optometría ☐ Servicios de apoyo ☐ Salud mental
☐ Técnico de farmacia ☐ Ver el folleto de educación sanitaria atado

Comentarios Adicionales:

Scheduled with provider this week

Firma de Respondiente: _____ Fecha: _____

CD 1738 SP 9/16

NON-EMERGENCY HEALTH CARE REQUEST

et al., 2:19-CV-0669-MO

Page 12 of 21

Exhibit 1

AL - Khasai 10877333 B-7B 11/29/18

Name State ID# Housing Date

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

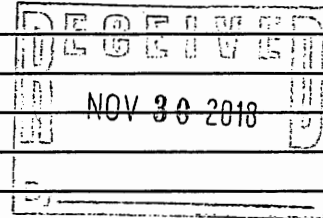
- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Glasses

- ☐ Eye exam for glasses
☐ Repair

Health Care request, issue, concern, or sickness:

I need to see someone about my
 eye it hurts.



We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: _____

Scheduled with provider
 12/3/18.

Responder's Signature: [Signature] Date: 11-30-18

NON-EMERGENCY HEALTH CARE REQUEST

2:19-CV-0669-MO

Page 13 of 21

Exhibit 1

Al-Khafagi, Tabbar

10877333

13-7

11-26-18

Name State ID# Housing Date

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

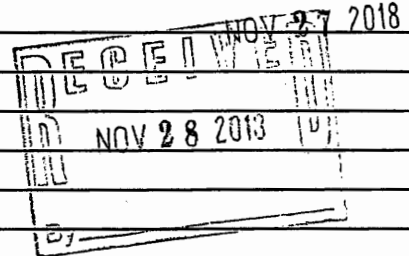
Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

I need to see someone about my eye-pressure (it hurts).

Received



We have taken the following actions in response to your health service request:

- ☒ You will be scheduled to see: ☒ Provider ☐ Nursing staff
☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: _____

Responder's Signature: Mi RN Lewis
RNDate: 11/28/18

NON-EMERGENCY HEALTH CARE REQUEST

Al-Khafagi, Jabbar 10877333 13-1-B 6-19/18

Name State ID# Housing Date

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

MY EYES ARE HURTING, AND I CAN'T SEE WELL
 IN THE MORNING.

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: _____

Received

YOU HAVE BEEN SCHEDULED

JUN 19 2018

Responder's Signature: _____

Date: _____

NON-EMERGENCY HEALTH CARE REQUEST

Page 15 of 21

Exhibit 1

Name Al-Khatami, T State ID# 10877533 Housing 13-1 Date 6-5-18

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

① When I go to the eye specialist I would like to take my paperwork or history to my eye surgery. Some of

② Is there going to be an Arabic Interpreter?

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: ① What paperwork are you wanting to take? We have paperwork that will accompany you to your appt.

② I do not believe so, we can discuss this further at your next appt here.

Responder's Signature: 6/13/18 S. P. H. S. Date: 6/13/18

Received
 JUN 08 2018

NON-EMERGENCY HEALTH CARE REQUEST

Page 16 of 21

Exhibit 1

Al-Khatagi J

10877333

13-1

6-7-18

Name State ID# Housing Date

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

My Right Eye, when I wake up, I only see shadows. After a few hours, I can see a little better. But my Right Eye hurts all day.

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments:

seen by Dr Rustal 6/6/18
 use eye drops as ordered

Responder's Signature:

J. Munn

Date:

6/7/18



NON-EMERGENCY HEALTH CARE REQUEST

Al-Khatami, et al., 2:19-CV-0669-MO

Page 17 of 21

Exhibit 1

Name Al-Khatami, J. J. J. State ID# 10877333 Housing 13-1 Date 6-2-18

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

My eye is red and hurts. Especially in the morning.

We have taken the following actions in response to your health service request:

☒ You will be scheduled to see: ☐ Provider ☒ Nursing staff

- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: Sick call

Responder's Signature: [Signature] Date: 6-2-18

Received
 JUN 2 2018

NON-EMERGENCY HEALTH CARE REQUEST

et al, 2:19-CV-0669-MO

Page 18 of 21

Exhibit 1

Name Al-Khazaj, TAREK State ID# 1041233 Housing 13-1 Date 5-28-18

Medications:

- ☐ I have not received my prescription
☐ My prescription is about to expire
☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
☐ Repair

Vaccines

- ☐ Hepatitis A/B
☐ Flu
☐ Pneumonia
☐ Shingles
☐ HIV Test
☐ Hepatitis C Test

Other Function

- ☐ BP check
☐ Test result request
☐ Is my appointment still scheduled?
☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

Dr. Bristol, we have talked about my eye and not being able to see
from the time I had the surgery, while I was at TBC.

I need to see an eye specialist?

My eyesight (left) was damaged because of the place that
ODD sent me to. I want TBC to approve me to be seen at the
Casey Eye Clinic (Portland) or some other specialist.

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments: Bnt

YOU HAVE BEEN SCHEDULED

5/28/18

Responder's Signature: _____ Date: _____

NON-EMERGENCY HEALTH CARE REQUEST

Name Al-Khatfagi, J. State ID# 10877333 Housing 13-1 Date 5-26-18

Medications:

- ☐ I have not received my prescription
- ☐ My prescription is about to expire
- ☐ My prescription is not helping

Vaccines

- ☐ Hepatitis A/B
- ☐ Flu
- ☐ Pneumonia
- ☐ Shingles
- ☐ HIV Test
- ☐ Hepatitis C Test

Other Function

- ☐ BP check
- ☐ Test result request
- ☐ Is my appointment still scheduled?
- ☐ Other issues – not sick:

Glasses

- ☐ Eye exam for glasses
- ☐ Repair

Health Care request, issue, concern, or sickness:

Am I scheduled to see the eye-specialist?
I need to see him?

Received

MAY 27 2018

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☐ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
- ☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments:

You are not scheduled at
this time

5/27/18

Responder's Signature: _____ Date: _____

OREGON DEPARTMENT OF CORRECTIONS

Page 20 of 21

Exhibit 1

INMATE COMMUNICATION FORM

TO: Medical Records Date: 12.19.17

State your issue in detail: Can I please get copies of my records regarding my visit with Dr. Sung (Charles Sung) optical surgeon. This visit was on 5.18.17.
~~Thank you~~ The copies I was sent were from Dr. Steve Evers not Dr. Charles Sung.

Inmate Committed Name (first middle last)

SID#

Housing Unit

Al-Khafagi, Sabbah108773335-24 B

Response/Action Taken:

The health referral outside agency sheet has the notes from DR Sung. The providers Recommendation on the second page is written and signed by DR Sung. The bottom part of the page is signed by DR Evers as he reviewed the notes written above by DR Sung. You have received the notes you requested.

Date Received:

Referred To*:

Date Answered:

DEC 20 2017
12/21/17

Signature of Staff Member:

Louisiana Medica

If forwarded, please notify the inmate

NON-EMERGENCY HEALTH CARE REQUEST

Page 21 of 21

Name AL KHAFAGI, JABBAR State ID# 10877333 Housing 5-24B Date 12-13-17 Exhibit 1

REC'D DEC 14 2017

Medications:

- ☐ I have not received my prescription
- ☐ My prescription is about to expire
- ☐ My prescription is not helping

Glasses

- ☐ Eye exam for glasses
- ☐ Repair

Vaccines

- ☐ Hepatitis A/B
- ☐ Flu
- ☐ Pneumonia
- ☐ Shingles
- ☐ HIV Test
- ☐ Hepatitis C Test

Other Function

- ☐ BP check
- ☐ Test result request
- ☐ Is my appointment still scheduled?
- ☐ Other issues – not sick:

Health Care request, issue, concern, or sickness:

MY EYES ARE VERY SENSITIVE AND PAINFUL, I WOULD LIKE TO BE
EXAMINED AT SICK CALL TO SEE MY PROVIDER. I AM ALSO
HAVING SEVERE BACK PAIN.

We have taken the following actions in response to your health service request:

- ☐ You will be scheduled to see: ☐ Provider ☒ Nursing staff
- ☐ Your request has been forwarded to: ☐ Manager ☐ Optometry ☐ Support Services ☐ BHS
☐ Pharmacy Technician ☐ See attached health education handout

Additional Comments:

you have appt already for your back pain

your scheduled to have your eye checked in Sick call

SICK CALL

Responder's Signature: Schodder

Date: 12-14-15

CERTIFICATE OF SERVICE AND FILING

I hereby certify that I filed and served a true copy of the foregoing document on the following parties this 4th day of February, 2020, by placing all in a sealed envelope, postage prepaid and deposited the same in the US Postal Service.

Department of Justice
Attn: Robert Sullivan, Senior Assistant Attorney General
1162 Court Street, NE
Salem, Oregon 97301

Lindsay Harp, LLP
Attn: Matteo J. Leggett, Attorney at Law
1300 SW Fifth Ave., Suite 3400
Portland, Oregon 97201-5640

A handwritten signature in black ink, appearing to read 'Jabbar Sachet Al-Khafagi', is written over a horizontal line.

Jabbar Sachet Al-Khafagi
3405 Deer Park Drive SE
Salem, OR 97310
Plaintiff, *pro se*